IN THE

Supreme Court of the United States

JAN 30 1950
CHARLES ELMORE CROPLEY
CLERK

OCTOBER TERM, 1949.

No. 565

HELEN YOUNG,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

To the Honorable Supreme Court of the United States:

Your petitioner, Helen Young, respectfully prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in the above cause on the third day of January, 1950, affirming the order of the District Court of the United States, in and for the Southern District of California, Central Division, of March 3, 1949, convicting your petitioner of certain purported offenses against the United States of America as more particularly hereinafter set out.

Opinion.

The opinion of the United States Court of Appeals the Ninth Circuit is shown in the transcript already file with this Honorable Court on pages 38 to 42, inc sive, of such transcript. Hereinafter citations from st transcript will, for purposes of convenience, be writt Tr. p.....

Jurisdiction.

1. This appeal is brought to test the validity and t criminal applicability of certain statutes of the Unit States, all of which are found in 38 U. S. C., namel Sections 694, 694a, 694d, 697 and 715 thereof.

2. The indictment [Tr. pp. 2-11], and particular Counts Two [Tr. p. 5], Three [Tr. p. 6], Four [Tr. p 8], Five [Tr. p. 9] and Six [Tr. p. 10], charge and alleg violations of the sections above cited. The Bill of Par ticulars [Tr. p. 11] shows that the Government relies upo these sections and these sections only as to the counts aforesaid. The verdict [Tr. p. 14] shows that petitioner was acquitted on Count One of the indictment and con- victed on Counts Two to Six, inclusive.

3. The District Court aforesaid had jurisdiction of the cause under Section 3231 of Title 18, U. S. C. The offenses charged, if any, were committed in Los Angeles County within the Central Division of the Southern Dis- trict of California. Notice of appeal to the United States Court of Appeals for the Ninth Circuit was filed March 29, 1949. [Tr. p. 18.] Said Circuit Court took jurisdic- tion under Section 1291 of Title 28 of the United States Code. Said Circuit Court gave its decision adverse to the petitioner on, to wit, January 3, 1950. [Tr. pp. 38-42.]

Thereafter, said Circuit Court, upon the application of your petitioner, has filed its transcript of record with this Honorable Court by mailing the same to Charles Elmore Cropley, Clerk thereof, as of January 11, 1950.

It should appear clearly from the above that this petition lies definitely within the jurisdiction of this Honorable Court under Section 1254, Title 28, U. S. C.

Questions Presented.

The main question here involved is whether or not the provisions of 38 U. S. C. 715 apply to Sections 694, 694a and 694d of the same Code, in such a manner as to impose criminal penalties on violations of the three sections last named. This, in turn, involves the interpretation of Section 697 of the same Code which seeks to adopt certain other sections by reference, including the penal provisions of Section 715 *(supra)*.

Respondent claims that the penal provisions of Section 715 *(supra)* apply to any and all violations of the civil sections above named (694, 694a and 694d of Title 38, U. S. C.) and particularly to Section 694a.

Appellant contends that they do not.

In order to make her said claim good and to perfect her record, appellant has asserted her said contention through her Motion to Dismiss [Tr. p. 12]; her Motion for Judgment of Acquittal at close of plaintiff's case [Tr. pp. 23-26]; her further Motion for Judgment of Acquittal at close of all testimony [Tr. pp. 27-30], and her exception to Instruction 13-C. [Tr. pp. 27-28.] All such motions and

exceptions actually are directed to the same point, which may be briefly stated as follows:

Appellant contends that no penal provisions whatever attach to any violation of those civil sections heretofore cited, *i. e.*, Sections 694, 694a and 694d, all of Title 38 U. S. C., and that the law provides no criminal penalty for the filing of any documents understating the price charged any veteran for the purchase of any real property or the construction of any house under such sections.

Facts.

Count Two of the indictment [Tr. p. 5 ff.] charges that on or about July 1, 1946, petitioner "did knowingly cause a false certificate to be made concerning a claim for benefits under the Servicemen's Readjustment Act of 1944 (38 U. S. C. 694 *et seq.*) in that (she) did inform . . . the Bank of America . . . that the amount to be paid by Lloyd Shearer, a Veteran . . . to purchase a lot and construct a house . . . as to which a loan guarantee was being sought from the government of the United States, was $9,671.00, being made up of $1,500.00 to purchase said lot, and $8,171.00 to construct such house, and did cause said Bank to certify in a Home Loan Report presented to the United States Veterans' Administrator, that the amount to be paid by such Veteran to purchase such lot and to construct such house was $9,671.00, and did not exceed the reasonable value thereof of $9,700.00, as determined by a proper appraisal . . ., made by . . . an appraiser designated by the Administrator of Veterans' Affairs; whereas, as petitioner well knew and caused to be concealed from said Bank and the Veterans' Administrator petitioner had caused said Veteran to

sign a contract to pay $2,200.00 for such lot and had caused such Veteran to sign a contract to pay cost plus 10%, with a minimum cost figure of $8,200.00 and a maximum cost figure of $9,000.00 for the construction of such house, and did demand of such Veteran the sum of $9,000.00 for such construction or a total of $11,200.00, for such house and lot."

Counts Three, Four, Five and Six [Tr. pp. 6-11] are similar in every respect excepting the dates, amounts and name of the Veteran.

Code Sections Analysed.

The Code sections upon which the Government relies for its penalty may be summarized as follows [see Bill of Particulars, Tr. pp. 11-12]:

38 U. S. C. 694 is a section wholly civil in its nature, defining a Veteran within the scope of the Act, providing an automatic guarantee by the Government of certain portions of certain loans made to such Veterans, imposing certain conditions upon the making of such loans including the length of amortization thereof, defining an honorable discharge, naming the lending agency who may make such guaranteed loans, and making other general provisions.

The pertinent portions of 38 U. S. C. 694a are quoted in full hereafter:

> "Any loan made to a Veteran under this subchapter, the proceeds of which are to be used for purchasing residential property or constructing a dwelling to be occupied as his home, or for the purpose of making repairs, alterations, or improvements in property owned by him and occupied as his home, is auto-

matically guaranteed if made pursuant to the provisions of this subchapter, including the following:

. . . . . .

"(3) That the price paid or to be paid by the Veteran for such property, or for the cost of construction, repairs, or alterations, does not exceed the reasonable value thereof, as determined by a proper appraisal made by an appraiser designated by the Administrator."

38 U. S. C. 694d provides for the promulgation of rules and regulations by the Administrator of Veterans' Affairs for the carrying out of the provisions of the subject, and further provides that he may designate certain employees of his department to exercise certain of his functions.

Be it noted that no criminal penalty appears in any of the foregoing sections nor is any penalty provided for the violation of any rules made pursuant to Section 694d *(supra)*.

38 U. S. C. 697 reads as follows:

"Sec. 697. *Application of other laws: acceptance of uncompensated services; contracts with agencies or persons for service.*

"Except as otherwise provided in this chapter, the administrative, definitive, and penal provisions under sections 30a and 485 of Title 5 and sections 701-703, 704, 705, 707-715, and 716-721 of this title, and the provisions of sections 450, 451, 454a and 556a of this title, shall be for application under this chapter. For the purpose of carrying out any of the provisions of sections 30a and 486 of Title 5 and sections 701-703,

704, 705, 706, 707-715, and 716-721 of this title, and this chapter, the Administrator shall have authority to accept uncompensated services, and to enter into contracts or agreements with private or public agencies, or persons, for necessary services, including personal services, as he may deem practicable. June 22, 1944, c. 268, Title VI, Sec. 1500, 58 Stat. 300."

Of those sections adopted or sought to be adopted by Section 697 *(supra)* only one has any application herein. [See Bill of Particulars, Tr. pp. 11-12.] This is 38 U. S. C. 715, which reads as follows:

"715. *False affidavit, declaration, voucher or writing.* Any person who shall knowingly make or cause to be made, or conspire, combine, aid, or assist in, agree to, arrange for, or in any wise procure the making or presentation of a false or fraudulent affidavit, declaration, certificate, statement, voucher or paper, or writing purporting to be such, concerning any claim for benefits under this title (Secs. 701 to 703, 704, 706, 707 to 715, 716 to 721 of this title), shall forfeit all rights, claims, and benefits under this title (such sections), and, in addition to any and all other penalties imposed by law, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $1,000 or imprisonment for not more than one year, or both. (Mar. 20, 1933, c. 3, Title I, Sec. 15, 48 Stat. 11.)"

It is now plainly to be seen that the only criminal penalty contained in any of the sections relied on by the Government in its indictment [Tr. pp. 2-11] or in its Bill of Particulars [Tr. pp. 11-12], is to be found in Section 715, *supra*. In this connection it ought to be remembered that

said Section 715 was passed by Congress on March 20, 1933, and that all the other sections relied on by the Government and noted above, were passed as parts of one Act, namely, World War II Service Men's Readjustment Benefits Act, codified as Chapter 11c of Title 38, U. S. C., and commonly known as the "G. I. Bill of Rights." This Act was not adopted until June 22, 1944, eleven years later than Section 715 *(supra)*, the penal clause relied on.

Petitioner's Contentions.

Petitioner contends:

1. None of the counts of the indictment upon which she was convicted state an offense against the Government.

2. That Congress has attached no penalty to Sections 694, 694a or 694d of Title 38, U. S. C.

3. That 38 U. S. C. 697, the adoptive section, adopts, if anything, the whole of 38 U. S. C. 715.

4. That 38 U. S. C. 715 does not, and by reason of the date of its passage, could not attach any penalty to any of the above mentioned sections, but on the other hand attaches a penalty only to those sections which are specifically set out within such Section 715.

5. That Congress did not intend to define a crime.

Petitioner further contends that under our accepted theories of legal interpretation as shown by the cases hereinafter cited:

1. That Congress not only must have an intent to denounce an act as a crime, but must express such intent in clear and unequivocal language.

2. That it is not the function of the courts to supply that which Congress has omitted in any law, even if such omission was inadvertent.

The Government's Contention.

The Government's theory appears to be that 38 U. S. C. 694a, which is not a penal section, has been violated by your petitioner; that 38 U. S. C. 697, which is not a penal section, adopts, among other things, 38 U. S. C. 715, which in turn contains the only penalty to be relied on; that such penalty, although expressly applied only to those sections quoted in the body of said Section 715, nevertheless in some devious fashion can be applied to the failure of appellant to comply with the first mentioned civil section, *i. e.*, 38 U. S. C. 694a.

The rule-making section, 38 U. S. C. 694d, is purposely omitted from the above analysis for two reasons: *First,* it has never been the Government's theory either in the District Court or the Court of Appeals that petitioner violated any rule made pursuant to such section. *Second,* the case of *Grimaud v. U. S.*, 220 U. S. 506, sets forth the formula which must be followed before courts may punish the violation of a rule made by a non-legislative official. This formula is so familiar as to justify the following brief paraphrasing thereof: Congress must declare a policy, the carrying out of which requires rules. It must then, in the same Act, designate an office, the holder of which it empowers to make rules pursuant to the aforesaid declared policy. It must then, in the same Act, provide a penalty for the violation of rules so made. The latter step is absent from the 38 U. S. C. 694d.

Congress Must Provide a Penalty.

As early as 1812 this Honorable Court in *U. S. v. Hudson & Goodwin*, 7 Cranch. 32, 3 L. Ed. 257, announced that the only court established by the Constitution was itself, and that other federal courts derived their authority as well as their very existence from Acts of Congress. Accordingly, it is said in that classical decision, the courts may not enforce any law, however urgent or necessary, which Congress has not passed, nor may the courts no matter how great the urgency, supply any defect in any law which Congress has passed.

This doctrine has come down to us intact throughout the many years since its original announcement. It has been frequently repeated and elaborated upon. Perhaps its most dramatic expression is to be found in *Viereck v. U. S.*, 318 U. S. 236, 87 L. Ed. 734, 63 S. Ct. 561. At the time of the decision in the *Viereck* case (1942) we were at war. Our war was far from won and our cause was going badly. The offense charged against Viereck was close to treason: *i. e.*, that he had supported the cause of our principal enemy, Germany. Nevertheless, in the face of all these circumstances which might have constrained this Honorable Court, if ever, to read into Acts of Congress more than they contain, in the defense of our very national existence, this Court said, on page 241 of Volume 318, U. S.:

> "One may be subjected to punishment for a crime in the federal courts only for the commission or omission of an act defined by statute, or by regulation having legislative authority, and then only if punishment is authorized by Congress."

In the same decision at page 243, this Court said further:

> "The unambiguous words of a statute which imposes criminal penalties are not to be altered by judicial construction so as to punish one not otherwise within its reach, however deserving of punishment his conduct may seem."

The analogy with the instant case is inescapable.

38 U. S. C. 715 denounces the use of various documents in connection with the presentation of claims under certain sections named therein. The Government urges that because a moral wrong results from the use of documents containing false statements in connection with a veteran's loan under 38 U. S. C. 694a, we should read into Section 715 *(supra)* language which it does not contain. This argument will not bear the test of the *Viereck* case *(supra)*.

The last expression of this Court upon the subject, so far as the writer knows, is to be found in *U. S. v. Evans*, 333 U. S. 483, 92 L. Ed. 823. This opinion, which is dated March 15, 1948, is by Mr. Justice Rutledge, all Justices concurring. The charge against Evans was that he violated 8 U. S. C. 144, in that he did harbor aliens not lawfully entitled to enter into or reside within the United States. That section reads as follows:

> "That any person * * * who shall bring into or land in the United States (or shall attempt to do so), or shall conceal or harbor or assist or abet another to conceal or harbor in any place * * * any alien not duly admitted by an immigrant inspector or not lawfully entitled to enter or to reside within the United States under the terms of this Act, shall be deemed guilty of a misdemeanor, and upon

conviction thereof shall be punished by a fine not exceeding $2,000, and by imprisonment for a term not exceeding five years, *for each and every alien so landed or brought in* or attempted to be brought in or landed." (Emphasis added.)

39 Stat. 874, 880, Chap. 29; 8 U. S. C. A., Sec. 144; 2 FAC, Title 8, Sec. 144.

It will be noted that although the above section denounces both the bringing into the United States of unauthorized aliens and their later harboring, its penalty clause contains the following language:

"* * * for each and every alien so landed or brought in * * *."

This anomaly appears to have arisen from the amendment of Section 144 *(supra)* by the adding thereto of the phrase, "* * * or shall conceal or harbor * * *." The evidence in the *Evans* case pointed to harboring and not to bringing in unauthorized aliens. The defendant contended that 8 U. S. C. 144 did not denounce the harboring of aliens and provided no penalty for such harboring.

The following excerpts from the *Evans* opinion are quoted, each showing the page in 333 U. S. from which it is taken:

"The case presents an unusual and difficult problem in statutory construction. It concerns not so much Congress' intent to make concealing or harboring criminal, as it does the penalty to be applied to those offenses * * *." (P. 484.)

Here this Honorable Court has as much as said that Congress *intended* to make harboring a crime. The fur-

ther reading of this case makes it to appear that Congress' *intent* is not enough, and that the penal statute as well as the prosecution of Evans must stand or fall on the clarity with which Congress has expressed its manifest intent.

Elsewhere in such opinion it is said:

> "In our system, so far at least as concerns the federal powers, defining crimes and fixing penalties are legislative, not judicial functions." (P. 486.)

Thus this Court has again announced the doctrines of *U. S. v. Hudson and Goodwin* and *Viereck*, both *supra*.

On page 487 this Court summarizes the Government's contention in the *Evans* case as follows:

> "In other words, because Congress intended to authorize punishment, but failed to do so, probably as a result of oversight, we should plug the hole in the statute."

Again, the analogy of the cited case with the instant case is plain indeed. Here, as well as there, the Government contends that because Congress intended to authorize punishment for the use of documents containing false information in connection with claims under 38 U. S. C. 694a, but failed to do so, this Honorable Court "should plug the hole in statute."

Such plugging this Honorable Court refused to do. The *Evans* decision ends with the following language:

> "This is a task outside the bounds of judicial interpretation. It is better for Congress, and more in accord with its functions, to revise the statute than for us to guess at the revision it would make. That task it can do with precision. We could do no more than make speculation law." (P. 495.)

Congress Did Not Intend to Define a Crime.

Had Congress believed that it had denounced any and all violations of any and all civil sections of the entire act by means of the adoptive Section 697 thereof, then it would not have had reason to place penal sections within the chapter. But 38 U. S. C. 696l is a penal section and 38 U. S. C. 696k is a quasi-penal section. Each is quoted hereafter:

"Sec. 696l. *Penalties for false statements, misrepresentations, and unlawful acceptance of allowance.*

"(a) Whoever, for the purpose of causing an increase in any allowance authorized under this subchapter, or for the purpose of causing any allowance to be paid where none is authorized under this subchapter, shall make or cause to be made any false statement or representation as to any wages paid or received or whoever makes or causes to be made any false statement, representation, affidavit, or document in connection with such claim, shall be guilty of a misdemeanor, and upon conviction therefor shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

"(b) Whoever shall obtain or receive any money, check, or allowance under this subchapter, without being entitled thereto and with intent to defraud the United States, shall be punished by a fine of not more than $1,000 or by imprisonment for not more than one year, or both."

"Sec. 696k. *Acceptance of unauthorized allowance.* Any claimant who knowingly accepts an allowance to which he is not entitled shall be ineligible to receive any further allowance under this sub-chapter."

38 U. S. C. 715 Applies Its Penalty Only to Veterans.

We further respectfully urge that Section 715 *(supra)*, which has been sought to be adopted, applies only to Veterans and not to those persons other than Veterans who violate the several sections named within it. This appears from reading the section itself, and particularly from the following excerpt therefrom:

> "Any person who shall knowingly make * * * or in any wise procure the making * * * of any false or fraudulent affidavit concerning any claim for benefits under section 701 * * * *shall forfeit all rights, claims, and benefits under such section* * * *." (Emphasis ours.)

Since none except Veterans have any rights, claims or benefits to be forfeited under the sections quoted in Section 715 *(supra)*, we urge that said section was directed by Congress against offenses committed by Veterans making false statements in connection with claims, and not against any persons who dealt with these Veterans.

State of Washington Cases.

The Supreme Court of the State of Washington has held in two cases that acts equivalent to those attributed in the indictment to this petitioner are not criminal. In full realization that the Supreme Court of the State of Washington is not authority to this Honorable Court, it appears to the writer, however, that the two Washington opinions are of the following value: Since ignorance of the law excuses no man, it follows that the law must be in such language that at least those learned in the law may understand it. When the Supreme Court of a sovereign state

reads the statutes in question here and finds in them nothing penal, then it is manifest that no simple contractor should be called upon to interpret that penalty which a state Supreme Court had not found. The Washington cases are further cited for their reasoning and persuasive authority. The first such case is *Bryant v. Stablein,* 28 Wash. 2d 739, 184 P. 2d 45. It reads, in part, as follows:

> "Although the act provides, in effect, that loans thereunder are guaranteed only if made pursuant to certain provisions, one of which is that the price to be paid by the veteran shall not exceed the reasonable value thereof as determined by an appraiser, *there is no penalty fixed for paying more or receiving more than the appraised value.* (Emphasis ours.) In short, the act relates simply to the conditions under which the government will guarantee a loan to the veteran in the first instance, not to contracts pending or concluded between the veteran and third persons. If the price to be paid for the property is found to exceed its appraised value, the government may refuse to guarantee the loan. If it does authorize the loan and the funds are used for the purchase of property, the seller is not concerned with the sources of the purchase price. He does not stand in the position of one who, having loaned money to the veteran, thereafter looks to the government for repayment thereof. His position is that of one who has been paid the full purchase price of his property as fixed by himself."

Ewing v. Ford, 195 P. 2d 650 (Wash. S. Ct., 1948), states on page 655:

> "In the case at bar, respondents have paid no more for the 'home property' . . . than its appraised

value. But even if they had in any manner agreed to pay, and had actually paid more than its appraised value, that transaction of itself would not have been illegal. The government might indeed have refused to guarantee a loan for a greater amount than the appraised value of the property, but as held in the *Bryant* case, *supra,* any payment by the veteran in excess of that amount would not make the transaction of sale and purchase illegal."

The Circuit Court Opinion.

Petitioner respectfully urges that the opinion of the United States Court of Appeals for the Ninth Circuit [Tr. pp. 38-42] does not settle the question presented to said Court, but rather avoids it.

Petitioner has never questioned the doctrine or practice of incorporation by reference, as such. The infirmity of the prosecution rests not upon the mere fact that a criminal penalty was sought to be attached to the civil Sections 694, 694a and 694d, all in Title 38, by the adoption of Section 715 of the same Code. The infirmity arises from the fact that when adopted, such Section 715 in no way imposes any penalty upon violations of those sections, but clearly imposes penalties only upon those sections named within itself.

The opinion of the Honorable Court of Appeals merely justifies the adoptive process. Our contention is that said Section 715 by its own terms clearly does not and cannot apply to Sections 694, 694a and 694d, all of Title 38.

Reasons Relied Upon for Granting Writ.

(1) The importance of the question presented, concerning as it does the proper application of Statutes of Congress.

(2) Conflict between the decision of the Circuit Court in this case, and the decisions of the highest court of a state within the same circuit (Washington) as to the interpretation and application of the same statutes. (*Bryant v. Stablein,* 28 Wash. 2d 739, 184 P. 2d 45.)

(3) Failure of the Circuit Court of Appeals to follow the applicable decisions of this Court. (*U. S. v. Hudson & Goodwin,* 7 Cranch. 32, 3 L. Ed. 257; *Viereck v. U. S.,* 318 U. S. 236, 87 L. Ed. 734, 63 S. Ct. 561; *U. S. v. Evans,* 333 U. S. 483, 92 L. Ed. 823.)

Specifications of Error.

1. Did the Court err in denying appellants' Motion to Dismiss the indictment and each and every count thereof? [Tr. p. 12.]

2. Did the Court err in denying appellants' Motion for Judgment of Acquittal at the close of the Government's case? [Tr. pp. 23-26.]

3. Did the Court err in denying appellants' Motion for Judgment of Acquittal at the close of all testimony? [Tr. pp. 27-30.]

4. Did the Court err in giving Instruction No. 13-C? [Tr. pp. 28-29.]

5. Did the Court of Appeals err in upholding the District Court as to the foregoing matters 1, 2, 3 and 4 in its opinion? [Tr. pp. 38-42.]

Conclusion.

We, therefore, most respectfully urge that this Honorable Court issue its Writ and cause judgment against your petitioner to be reversed.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 565

HELEN YOUNG, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (R. 38-42) is reported at 178 F. 2d 78.

JURISDICTION

The judgment of the Court of Appeals was entered on November 14, 1949 (R. 43), and a petition for rehearing was denied on January 3, 1950 (R. 44). The petition for a writ of certiorari was filed on January 30, 1950. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

See also Rules 37(b)(2) and 45(a), F. R. Crim. P.

QUESTION PRESENTED

Whether the criminal sanctions of Section 1500 of the Servicemen's Readjustment Act of 1944 and Section 15 of the Act of March 20, 1933, c. 3, 48 Stat. 11, apply to one who, not being himself a veteran, knowingly causes a false certificate to be made concerning a claim for benefits under the 1944 Act.

STATUTES INVOLVED

The pertinent provisions of the Servicemen's Readjustment Act of June 22, 1944, c. 268, 58 Stat. 284, 291, as amended by the Act of December 28, 1945, 59 Stat. 623, are as follows:

> Sec. 500. [38 U. S. C. 694(a)] (a) Any person who shall have served in the active military or naval service of the United States at any time on or after September 16, 1940, and prior to the termination of the present war and who shall have been discharged or released therefrom under conditions other than dishonorable after active service of ninety days or more, or by reason of an injury or disability incurred in service in line of duty, shall be eligible for the benefits of this title. Any loan made by such veteran within ten years after the termination of the war for any of the purposes, and in compliance with the provisions, specified in this title, is automatically guaranteed by the Government by this title in an amount not exceeding fifty per centum of the loan: *Provided,* That the aggregate amount guaranteed

shall not exceed $2,000 in the case of non-real-estate loans, nor $4,000 in the case of real-estate loans; or a prorated portion thereof on loans of both types or combination thereof.

* * * * *

Sec. 501. [38 U. S. C. 694(a)] Any loan made to a veteran under this title, the proceeds of which are to be used for purchasing residential property or constructing a dwelling to be occupied as his home or for the purpose of making repairs, alterations, or improvements in property owned by him and occupied as his home, is automatically guaranteed if made pursuant to the provisions of this title, including the following:

(1) That the proceeds of such loan will be used for payment of the property purchased or constructed or improved;

* * * * *

(3) That the price paid or to be paid by the veteran for such property or for the cost of construction, repairs, or alterations does not exceed the reasonable value thereof as determined by proper appraisal made by an appraiser designated by the Administrator.

* * * * *

Sec. 1300. [38 U. S. C. 696k] Any claimant who knowingly accepts an allowance to which he is not entitled shall be ineligible to receive any further allowance under this title.

Sec. 1301. [38 U. S. C. 696l] (a) Whoever, for the purpose of causing an increase in any allowance authorized under this title, or for

the purpose of causing any allowance to be paid where none is authorized under this title, shall make or cause to be made any false statement or representation as to any wages paid or received, or whoever makes or causes to be made any false statement of a material fact in any claim for any allowance under this title, or whoever makes or causes to be made any false statement, representation, affidavit, or document in connection with such claim, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

* * * * *

Sec. 1500. [38 U. S. C. 697] Except as otherwise provided in this Act, the administrative, definitive, and penal provisions under Public, Numbered 2, Seventy-third Congress, as amended, and the provisions of Public, Numbered 262, Seventy-fourth Congress, as amended (38 U. S. C. 450, 451, 454a and 556a), shall be for application under this Act. For the purpose of carrying out any of the provisions of Public, Numbered 2, as amended, and this Act, the Administrator shall have authority to accept uncompensated services, and to enter into contracts or agreements with private or public agencies, or persons, for necessary services, including personal services, as he may deem practicable.

Public Law No. 2, 73d Cong., 1st sess., referred to in Sec. 1500 of the Servicemen's Readjustment Act of 1944, is the Act of March 20, 1933, c. 3, 48

Stat. 811, hereinafter referred to as the 1933 Act, Sec. 15 of which (38 U. S. C. 715) provides:

> Any person who shall knowingly make or cause to be made, or conspire, combine, aid, or assist in, agree to, arrange for, or in any wise procure the making or presentation of a false or fraudulent affidavit, declaration, certificate, statement, voucher, or paper, or writing purporting to be such, concerning any claim for benefits under this title, shall forfeit all rights, claims, and benefits under this title, and, in addition to any and all other penalties imposed by law, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $1,000 or imprisonment for not more than one year, or both.

STATEMENT

On October 6, 1948, in the District Court for the Southern District of California, petitioner and Edythe L. Foxall were indicted in the first count of an indictment in six counts for conspiring, prior to March 1, 1946, and continuously thereafter to on or about October 6, 1948, to defraud the Veterans Administration in the administration of the Servicemen's Readjustment Act of 1944, in violation of 18 U. S. C. (1946 ed.) 88. Counts 2 and 3 charged petitioner and Foxall, and counts 4, 5 and 6 charged petitioner alone, with knowingly causing false certificates to be made concerning claims for benefits under the Act, in violation of Section 1500 of the Servicemen's Readjustment Act (38 U. S. C. 697) and Section 15 of the 1933 Act (38 U. S. C. 715).

(R. 2-11.) The substantive counts—2 to 6, inclusive—are identical except as to the dates, amounts and the veterans named therein, and count 2 is quoted here in pertinent part as typical of these counts (R. 5-6):

> * * * defendants Helen Young and Edythe L. Foxall did knowingly cause a false certificate to be made concerning a claim for benefits under the Servicemen's Readjustment Act of 1944 (38 U. S. C., Sections 694, et seq.); in that defendants did inform the Culver City Branch No. 366 of the Bank of America National Trust and Savings Association that the amount to be paid by Lloyd Shearer, a veteran of World War II, to purchase a lot and construct a house at 10813 Barman Avenue, Culver City, California, as to which a loan guarantee was being sought from the Government of the United States, was $9671.00, being made up of $1500.00 to purchase said lot and $8171.00 to construct such house, and did cause said bank to certify in a Home Loan Report presented to the United States Veterans Administration that the amount to be paid by such veteran to purchase such lot and to construct such house was $9671.00 and did not exceed the reasonable value thereof of $9700.00, as determined by a proper appraisal dated May 3, 1946, made by Harrison H. Crawford, an appraiser designated by the Administrator of Veterans' Affairs; whereas, as defendants well knew and caused to be concealed from said bank and the Veterans Administration, defendants had caused said veteran to sign a contract to pay

$2200.00 for such lot, and had caused said veteran to sign a contract to pay cost plus 10 per cent, with a minimum cost figure of $8200.00 and a maximum cost figure of $9000.00 for the construction of such house, and did demand from said veteran the sum of $9000.00 for such construction, or a total of $11,200.00 for such house and lot.

Prior to trial, the court denied petitioner's motion to dismiss the indictment on the ground that each count failed to state facts sufficient to constitute an offense against the United States (R. 12-13). At the close of the Government's case (R. 23-26) and again at the close of all the testimony (R. 27), petitioner moved for a judgment of acquittal on the same ground and the motion was in each instance denied (R. 26, 27). Over petitioner's objection, the court instructed the jury as follows (R. 27-30):

> Section 715 of Title 38 of the United States Code provides in part that:
>
> "Any person who shall knowingly make or cause to be made, * * * or in any wise procure the making or presentation of a false * * * certificate * * * concerning any claim for benefits * * *"
>
> under the Servicemen's Readjustment Act of 1944 shall be guilty of an offense.

The jury found petitioner not guilty on count 1, but guilty on each of the remaining counts (R. 14).

She was sentenced to one year's imprisonment and fined $1,000 on each of counts 2 to 6, the imprisonment sentences to run concurrently (R. 16). Execution of all the sentences was suspended, however, and petitioner was placed on probation for five years on condition, *inter alia*, that she make restitution to the veterans involved and pay a $2,000 fine. (R. 16-18.) On appeal, the judgment of conviction was affirmed (R. 43).

ARGUMENT

Petitioner's sole contention is that the act charged in each of counts 2 to 6 of the indictment, i. e., knowingly causing a false certificate to be made concerning a claim for benefits under the Servicemen's Readjustment Act of 1944, does not constitute a criminal offense under Section 1500 of that Act and Section 15 of the 1933 Act. She urges that Congress, in enacting Section 1500 of the 1944 Act, did not intend to make such act a crime, that even if it had, the statutory language does not accomplish that purpose, and that if any penalty attaches to the commission of such an act, it applies only to veterans claiming benefits under the 1944 Act (Pet. 10-15). We believe that the Court of Appeals was clearly right in rejecting petitioner's contentions.

In support of her contention that Congress, in enacting Section 1500 of the 1944 Act, did not intend to penalize the commission of the acts charged, petitioner relies on the presence of the limited penal

and disqualifying provisions in Sections 1300 and 1301 of the same Act, which relate only to false statements in connection with claims for unemployment allowances. The presence of these provisions, she urges, shows that Congress did not intend to adopt the broader penal provisions of Section 15 of the 1933 Act. (Pet. 14.) Such intent might properly be inferred if there were no other penal provisions in the 1944 Act. But in Section 1500 of that Act, Congress expressly provided that, "Except as otherwise provided in this Act, the * * * penal provisions" of the 1933 Act "shall be for application under this Act." Congress obviously intended that the provisions of Section 15 of the 1933 Act, punishing the making of any false or fraudulent statements, etc., should be applicable to all false statements in connection with claims for benefits under the 1944 Act except such statements as were covered by the penal provisions of that Act. The committee reports accompanying the 1944 Act categorically state that the purpose of Section 1500 was to make "applicable to all titles of the act * * * the administrative, definitive, or penal provisions of" the 1933 Act and to integrate the two statutes. S. Rep. No. 755, p. 14; H. Rep. No. 1418, 78th Cong., 2d sess., p. 16. Moreover, in refutation of petitioner's suggestion (Pet. 14) that Sections 1300, 1301 and 1500 are inconsistent and overlapping, the reports state that Section 1500 "would not carry forfeiture for fraud

under Title V [which contains Sections 1300 and 1301] inasmuch as the penalties for fraud under said title are specifically provided in" Section 1300. In other words, the penalty provisions of Sections 1300 and 1500 are simply directed at different acts. Title V of the 1944 Act deals entirely with unemployment allowances which, unlike the other provisions of the Act, are administered by state agencies instead of federal agencies. To avoid any possible question as to the inapplicability of the comprehensive penal provisions of Section 1500 to the making of false statements to state agencies, Congress enacted Sections 1300 and 1301. S. Rep. No. 755, *supra,* pp. 3, 10-14; H. Rep. No. 1418, *supra,* pp. 3-4, 14, 15.

Petitioner's contention that the language of Section 1500 of the 1944 Act is ineffective to make the act in question a crime is equally without merit (Pet. 10-13). The language employed in Section 1500, that the penal provisions of Section 15 of the 1933 Act "shall be for application under this Act" is "not ambiguous, nor is it uncertain to the extent of obscuring the legislative intent. The words convey a definite meaning which involves no absurdity, and they cannot be disregarded because that which they import could have been better expressed." (R. 42). Petitioner argues in support of this contention (Pet. 17) that Section 15 of the 1933 Act by its own terms does not and cannot apply to false statements in connection with applications for benefits under Sections 500 and

501 of the 1944 Act. She adds appeal to her contention by quoting 38 U. S. C. 715 rather than the original Section 15 because, in the code, there is a codifier's specification of sections to which section 715 applies. But no such enumeration appears in the 1933 Act itself. Moreover, as we have shown, Congress intended to integrate the two statutes. To accomplish that purpose in respect of providing penalties for false statements in connection with claims for benefits under both acts (with the exceptions noted in Section 1500 of the 1944 Act, *supra*, p. 4), it incorporated by reference Section 15 of the 1933 Act and by so doing made it as much a part of the 1944 Act as though it had repeated the applicable language of that section.[1] For this reason, *United States* v. *Evans*, 333 U. S. 483, upon which petitioner relies (Pet. 11), is inapposite. The statute involved in that case, while denouncing the concealing or harboring of aliens, provided penalties only for landing and bringing in aliens illegally.

The Washington Supreme Court decisions upon which petitioner also relies (*Bryant* v. *Stablein*, 28 Wash. 2d 739; *Ewing* v. *Ford*, 31 Wash. 2d 126; Pet. 15-17) involved suits for specific performance of contracts for the sale of real estate. The defense

[1] Cf. *Markham* v. *Cabell*, 326 U.S. 404, 411:

"* * * the normal assumption is that where Congress amends only one section of a law, leaving another untouched, the two were designed to function as parts of an integrated whole. We should give each as full a play as possible."

Cf. also *Clark* v. *Uebersee Finanz-Korp.*, 332 U.S. 480, 488.

in each case challenged the validity of the contract because the veteran purchaser allegedly agreed to pay more than the Veterans Administration's appraised value. The court in each case upheld the validity of the contract because "there is no penalty fixed for paying more or receiving more than the appraised value" (see Pet. 16). Even conceding the correctness of these decisions, they avail petitioner nothing. For, as we have shown, Section 1500 of the Servicemen's Readjustment Act of 1944 does penalize the making or causing of false statements in applications for loan benefits. The federal courts which have passed on the question have uniformly held, as did the court below, that there can be no doubt that Section 1500 penalizes the acts charged in counts 2-6 of the indictment.[2]

Finally, petitioner asserts (Pet. 15) that Section 15 of the 1933 Act can apply only to veterans who make false statements because it provides, *inter alia*, that "any person" making such a statement "shall forfeit all rights, claims, and benefits under this title, and, in addition to any and all other penalties imposed by law, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $1,000 or imprisonment for not more than one year, or both. But Section 15 expressly applies to "Any person who shall knowingly make or cause to be made, or conspire, combine, aid, or assist in, agree to, arrange for, or

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[2] *United States* v. *Selph*, 82 F. Supp. 56, 58 (S.D. Cal.); *United States* v. *Oakland*, 81 F. Supp. 343 (W. D. La.).

in any wise procure the making or presentation of a false or fraudulent affidavit, declaration, certificate, statement, voucher, or paper, or writing purporting to be such." These provisions obviously apply to non-veterans as well as veterans.

CONCLUSION

There is no conflict of decisions, and no questions are presented meriting further consideration by this Court. It is respectfully submitted that the petition for a writ of certiorari should be denied.

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